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# Turtle Mountain Band of Pembina Chippewa Indians

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TURTLE MOUNTAIN BAND OF PEMBINA CHIPPEWA  
INDIANS.

FEBRUARY 23, 1898.—Referred to the Committee on Indian Affairs and ordered to be printed.

Mr. KYLE presented the following

PETITION AND MEMORIAL OF THE TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS, IN THE STATE OF NORTH DAKOTA, PRAYING FOR THE REFERENCE OF THEIR CLAIM TO THE COURT OF CLAIMS UNDER THE BOWMAN ACT, AN ACT APPROVED MARCH 3, 1883, 22 STATS., P. 485, FOR ADVICE TO THE COMMITTEE ON THE DISPUTED QUESTIONS OF LAW AND FACT IN THE CASE, FOR THE SEGREGATION OF THEIR UNCEDED LANDS AND FOR THEIR RELINQUISHMENT, UNDER THE PROVISION OF H. R. 2279, FIFTY-FIFTH CONGRESS, FIRST SESSION, NOW PENDING.

*To the Senate and House of Representatives of the United States in Congress assembled :*

The undersigned, the accredited representative and attorney of said Turtle Mountain Band of the Pembina Chippewa Indians, respectfully submit the accompanying Department letters, with the petition and memorial of said Indians, and do hereby respectfully ask the same to be printed as a document for the use of the Senate and the House in considering H. R. 2279, Fifty-Fifth Congress, first session, now pending.

We believe that Congress is disposed to do justice to the Turtle Mountain Band of Pembina Chippewa Indians in the settlement of their claim which is now pending before it. By reason, however, of the complications which have unavoidably arisen from the many undertakings and proceedings had in the attempt to secure a settlement through Congress and the Department of the Interior during the last twenty-five years or more, it is necessary to enable our Representatives, Senators, and Members in Congress to become fully acquainted with all the facts and conditions of this claim, in order that Congress may be enabled to do us justice in the premises. The most important and material facts touching the claim of said Indians which are necessary to be considered are fully discussed in said Department letters and contain the findings and reports of the several commissions and the several commissioners of Indian affairs who at different times investigated said claim, whose findings and reports are quoted and referred to in said petition and memorial and are indispensable for their reference in connection with said H. R. 2279, Fifty-fifth Congress, first session, now pending and under your consideration.

In all fairness, both in the interest of the Indians and the Government of the United States, we respectfully ask that we may be accorded the printing of the said Department letters and such other material of evidence as may be found necessary for the purpose of showing the condition and status of this claim to all the members of your honorable body; we therefore respectfully ask to have printed, as a document for the use of our representatives, Senators and Members of Congress, our said petition and memorial, together with said Department letters, which are hereto annexed, and marked Exhibit, respectively numbered 1, 2, 3, 4, 5, 6, and 7, in the order of their respective dates, as follows, to wit:

First. The petition and memorial of said Turtle Mountain band of the Pembina Chippewa Indians which accompanied Senate bill 3802, introduced by Mr. Davis February 18, 1898, referring the claim of said Turtle Mountain band of Chippewa Indians to the Court of Claims under the provisions of the Bowman Act, approved March 3, 1883, and was referred to the Committee on Indian Affairs, with said petition and memorial, as the "accompanying papers" (copy herewith).

Second. Exhibit No. 1, a letter from the Hon. E. A. Hayt, Commissioner of Indian Affairs, dated May 23, 1878, to the honorable Secretary of the Interior, upon his reference of a letter of March 3, 1878, from John B. Bottineau, presenting a printed argument in favor of the claim of said Indians, and asking for their relief.

Third. Exhibit No. 2, a letter from the Hon. H. Price, Commissioner of Indian Affairs, dated February 14, 1882, to the honorable Secretary of the Interior, upon his reference of a letter of December 19, 1881, from Lieutenant Creel, of the United States Army, addressed to Hon. William Windom, of the United States Senate, touching the claim of said Indians.

Fourth. Exhibit No. 3, a second letter from the said Hon. Mr. H. Price, dated June 7, 1882, to the honorable Secretary of the Interior, upon his reference of a letter from Mr. George P. Bradstreet, clerk of the Senate Committee on the Judiciary, dated May 29 (ultimo), upon Senate bill No. 925 (Forty-seventh Congress), to provide for the support of said Indians and to extinguish their title to lands, etc.

Fifth. Exhibit No. 4, a letter from Hon. R. V. Belt, Acting Commissioner of Indian Affairs, dated September 21, 1891, to the honorable Secretary of the Interior, upon his reference of a communication from J. B. Bottineau, attorney for said Turtle Mountain band of Chippewa Indians, submitting a printed copy of the preamble and resolutions by said band January 7, 1891, in which their claims and need are set forth.

Sixth. Exhibit No. 5, a letter from Hon. T. J. Morgan, Commissioner of Indian Affairs, dated January 6, 1893, to the honorable Secretary of the Interior, upon his reference of the report of the Turtle Mountain Indian Commission dated December 3, 1892, submitting an agreement made October 22, 1892 (against the ratification of which by Congress the chief and council of the tribe are strenuously protesting upon the ground cited).

Seventh. Exhibit No. 6, a letter from the said Turtle Mountain Chippewa Indians, dated January 26, 1898, stating their conditions and urging the settlement of their claim and asking for an appropriation for their temporary relief pending the settlement of their claim.

Respectfully submitted for and on behalf of said Turtle Mountain band of the Pembina Chippewa Indians.

J. B. BOTTINEAU,  
*Their Representative and Attorney,*  
 No. 62 C Street N W., Washington, D. C.

*To the Senate and House of Representatives of the United States in Congress assembled:*

Your petitioners and memorialists, the said Turtle Mountain Band of Chippewa Indians, by authority of their chief, Little Shell, Red Thunder, his premier, Oshkena-wence (the young man), Sasswain Poitra, his braves, and others of the councilmen and representative men of said tribe, the undersigned, on behalf of said band of Indians, do hereby respectfully pray that the Committee on Indian Affairs, having before it and under consideration a certain agreement concluded between the Turtle Mountain Indians, and the commission appointed under the provisions of the Indian appropriation act of July 13, 1892, with all the proposed amendments to said agreement; also the protest of said Indians against the ratification by Congress of said agreement; also the Department letters and reports or documents and other matters of evidence which may be before any committees of Congress touching the rights and interests of said Indians to the lands claimed by them, be, by said committee, referred to the Court of Claims under the "Bowman" Act, entitled "An act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government," approved March 3, 1883 (22 Stat. L., p. 485), for advice to said committee of the disputed questions of law and fact in the case; for the segregation of their unceded lands, and for their relinquishment, under the provision of H. R. bill 2279, Fifty-fifth Congress, first session, to provide for the relinquishment by the Turtle Mountain Band of the Pembina Chippewa Indians of their unceded lands, and for other purposes, now pending.

In support of this petition and memorials we do hereby respectfully express and submit that the said alleged agreement, or the so-called (by said Indians) "ten-cent treaty," together with all the amendments thereto which may be pending before Congress for ratification, in its modified form, has never been authoritatively acknowledged or recognized by said tribe of Indians, or by any of the representative men thereof, and they strenuously protest against its ratification by Congress upon the ground that it was signed only by unauthorized and irresponsible Indians, and was not fairly procured, and was so procured under the protest of and against the will and consent of the chief, the councilmen, and the representative men of the tribe, and was not signed by any of them who are the only authority recognized by the tribe for the transaction of their tribal affairs, and especially upon the further ground that the compensation stipulated to be paid to them in said agreement is inadequate, unreasonably too small, and does unjustly discriminate against them, as compared with the prices accorded and paid to their neighbor Indians for similar rights and interests and for similar lands.

The population of the Turtle Mountain Chippewa Indians proper, as claimed by themselves to be not less than 3,000 individuals, including all those scattered and living in different parts of North Dakota, Montana, and Minnesota; also those who are now living and roaming in the vicinity of Woods Mountain, in the British Possessions.

The commissioners who concluded said alleged agreement in said report say:

The total number enumerated as belonging to the band (of said Indians) at the time was 2,327, including full and mixed bloods on and off the reservation. \* \* \*

In this report the commissioners referred to the great difficulties in the way of making anything like an accurate census of the Turtle

Mountain Indians, owing to their affiliation and relationship to the "British Indians" (no doubt referring to their kinsmen who rightly belong to said tribe, but now roaming in the British Possessions, above referred to) and the seeming impossibility of separating them.

Touching this subject in their said report the commission further says:

In short, referring particularly to the Turtle Mountain Chippewas, they should be given a hearing before some impartial magistrate, with power to call witnesses and take testimony, before passing on the question of whether they are American Indians or not, before denying or prejudicing any legal rights they may have as Americans by nativity or adoption. *Prima facie*, at least, those whose names were enrolled on the census list are American Chippewas. To rule otherwise on *ex parte* evidence would do violence to the common sense of right. Proper respect for the consistency of our judicial economy demands for them their "day in court" in cases where their rights as Americans are in controversy.

It has never been found profitable to drive a hard bargain with the Indians or to take advantage of their inexperience and comparative helplessness. The enumerators were instructed to exercise great care in taking names for the census. They were told not to enroll any person with reference to whose right to membership in the band they had reasonable ground for doubt. The commissioners believe that they followed the instructions given them and exercised care in doing their work.

The report of the said commission further showed that it wholly failed in securing the removal of the Indians to another reservation and the settlement of their claim against the Government.

The foregoing extracts, which are quoted from the report of said commission, may be found in the Department letter of the Hon. D. M. Browning, Commissioner of Indian Affairs, dated July 6, 1893, to the honorable Secretary of the Interior, a copy of which is printed as Document No. 10, on pages 133 to 137 of the printed protest of said Turtle Mountain Indians.

The wrong impression which seems to be entertained generally by our Representatives and Senators in Congress and some of our Government officials seems evidence of inadvertency on the part of those wrongly impressed, because the original rights and interests of said Indians seems to be plainly expressed by the honorable Commissioner of Indian Affairs, Mr. H. Price, in his letter and report of February 14, 1882, to the honorable Secretary of the Interior. (Vide pp. 2, 3, and 4, H. R. 1144, first session Forty-seventh Congress, by Mr. Deering, M. C., from the Committee on Indian Affairs; also, on pages 27 to 30 of the printed protest of the Turtle Mountain Indians.)

In discussing the merits of this claim, among other things the Commissioner says:

That their possession of this country has never been successfully disputed by any of the neighboring or other tribes of Indians, but has at all times been recognized as the country of the Turtle Mountain Band of the great Chippewa Nation, of which the three Chippewas—Little Shell, grandfather, father, and son—have been principal chiefs for the last fifty years, and that they have never by general council, by their chiefs, or by any authorized delegates, entered into any treaty with the United States by which they ceded any portion of their possessions. \* \* \*

It may be well to state here that if any of the Sioux tribes ever claimed this country, all such claim was relinquished by the treaty of April 29, 1869 (Stat. 15, p. 635), the second article of which, after defining the boundaries of their reservation, provided as follows: (see Article II) \* \* \*

The boundaries of the unceded Indian country claimed by the Pembina Chippewas, and recognized by this bureau to the extent indicated in report to department quoted from in the beginning of this letter, are marked, with approximate accuracy only, upon the map herewith inclosed. As has been seen, its area has been estimated at 9,500,000 acres. As a portion of their original claim was taken for the use of the Fort Berthold Indians, it is not likely that it will now exceed 9,000,000 acres.

It is not at all probable that this territory will ever be needed by the Government for Indian purposes. The Indians now occupying and claiming it do not need more than one-twentieth part thereof, and I am firmly convinced that the entire tract,

except, say, 500,000 acres, which should be retained in a compact body for them, should be sold for the benefit of the Turtle Mountain Indians and their brethren now at the White Earth Agency, who should be held and deemed to be as much entitled to share in the benefits arising from such sale as they, the Turtle Mountain Band.

It seems to me that these Indians are justly entitled to the recognition of their claim on the part of the Government to the lands in question, and the files and records abound in evidence showing that this office has long recognized such claim. \* \* \*

The honorable Commissioner, Mr. H. Price, concluded this letter with an estimate of the price of these unceded lands in the following words:

At 50 cents per acre, assuming the estimated area after deducting the lands to be retained (8,500,000 acres) to be correct, the proceeds would reach the sum of \$4,250,000; the interest on which amount, at 3 per cent, would be \$127,500. At 25 cents per acre the amount received would yield \$63,750 at 3 per cent.

If the lands were sold at the minimum price of the public lands (\$1.25 per acre) the amount accruing from such sale would be very great—\$10,625,000.

The Indians need present assistance, and if it could be afforded in the sale of the public lands it would be immeasurably to their advantage.

I return herewith Lieutenant Creel's letter, with Senator Windom's indorsement, and inclose a copy of this report.

Very respectfully, your obedient servant,

H. PRICE, *Commissioner*.

The SECRETARY OF THE INTERIOR.

In his further report upon the merits of this claim, in a second letter, dated June 7, 1882, to the honorable Secretary of the Interior, among other things the honorable Commissioner, Mr. H. Price, says:

Perhaps the most important evidence at hand, touching the matter to which our attention is directed, is to be found in the report of a commission appointed by the Secretary of the Interior under the provisions of the act of June 7, 1872 (17 Stat. L., p. 281), to investigate the title and interest of the Sisseton and Wahpeton bands of Sioux Indians to the lands mentioned in Article II of the treaty concluded with said Indians February 19, 1867. \* \* \*

After quoting said commission's report and the authorities therein cited by said commission, Commissioner Price further says:

Upon the report of said commission, Congress, by act of June 22, 1874, in confirming the agreement entered into with the Sisseton and Wahpeton bands, virtually acknowledged and confirmed the claim of said Indians to the lands described in Article II aforesaid.

It appears, then, that the first and one of the most important duties that engaged the attention of the said commissioners was the determination of the boundary lines between the Sioux and Chippewa country.

In pursuing their investigations they found that the Sioux Indians had claimed and did claim the country southerly of Devils Lake, embracing the region described in Article II of the treaty of 1867; that the extent of their original claim did not cover any territory north of said lake, and that they had, by solemn treaty with the Chippewas, entered into more than forty years ago, so agreed and declared.

The subsequent action of Congress in confirming the agreement made by and between the said commissioners and the Sisseton and Wahpeton bands must be considered as having forever settled the disputed boundary question between the Sioux and Chippewas. \* \* \* (A copy of the said letter and report may be found printed on pp. 68-74 House Ex. Doc. No. 229, Fifty-second Congress, second session, also on pp. 122-128 of the printed protest of said Indians.)

The only obstacles we find in the way which have tended to impair our claim to said unceded country and obstructed the way from securing an equitable settlement from the Government may be safely attributed to said wrong impression of the "vagueness" of said claim, which seems to have been inadvertently created, as appears of record in the Department of Indian Affairs, in an official letter and report from the Hon. R. V. Belt, Acting Commissioner of Indian Affairs, to the honorable Secretary of the Interior, of September 21, 1891. (See copy on pp. 38 to 43 of the printed protest of said Turtle Mountain Indians.)

In discussing the claim of said Turtle Mountain Chippewa Indians, among other things, Acting Commissioner Belt says:

Referring to a statement, in a report of May 23, 1878, from this office on the rights of the Pembina bands of Chippewas in the country claimed by them, that the only treaty provision or other data conflicting with the claim of the Pembina bands to any portion of the territory named is to be found in the treaty of February 19, 1867 (15 Stats., 505), with the Sisseton and Wahpeton bands of Sioux, who ceded to the United States certain rights of way over lands embraced within the same, attention is called, in the paper submitted by Mr. Bottineau, to the preamble of the agreement of September 20, 1872 (Revis. Ind. Trs., 1051), with the Sisseton and Wahpeton bands of Sioux, in the preamble to which it is stated in the treaty of 1867, above referred to, that these bands of "Indians ceded to the United States certain privileges and rights supposed to belong to said bands in the territory described in article 2 of said treaty," and it is claimed that the phraseology here used casts a suspicion upon the title of the Sioux to this country. \* \* \*

Further on in this letter, in discussing the complaint of said Indians against the invasion of their country by the immigration of large numbers of eager white settlers, etc., among other things which Mr. Belt finds and reports, he says:

Upon these papers this office submitted a report February 17, 1887, in which the opinion was expressed that the claim of these Indians, if they have any, can only finally be adjudicated and determined by the legislative branch of the Government, and that it should not be considered by the Executive as a bar to the further settlement and development of the country to which it extended; and it was submitted for the consideration of the Department "whether it would not be best to remove all restriction as to the settlement of this country by resuming survey and permitting entry, leaving the claim of the Indians to be finally settled by Congress."

Upon this report Acting Secretary Muldrow, without determining whether or not the claim of the Indians was well founded, directed, in a letter of April 4, 1887, to the Commissioner of the General Land Office, that the surveys authorized by Secretary Teller in 1882 be continued.

The Department rulings, so far as they have given any expression upon the merits of the claim of these Indians to any valid title to the lands referred to, have been adverse thereto, though I do not know that any formal and final decision on the question has ever been made. \* \* \* (See copy of this letter and report on pp. 38 to 43 of the printed protest of said Indians.)

From the facts aforesaid, and by reason of said official findings and reports made by said Acting Commissioner, Mr. R. V. Belt, which materially conflicts with the findings and reports made by the honorable Commissioner, Mr. H. Price, hereinbefore cited, upon the question of the validity and merits of the claim of said Turtle Mountain Chippewa Indians to their unceded country, seems very important and imperative that the question of the validity and merits of their claim should be first determined before justice can be done them by the Government in the settlement of the same.

Wherefore, in order to enable them to secure from the United States Government a reasonable compensation for their claim, without any unreasonable discrimination as compared with the prices and compensations accorded by the United States Government in the settlement of similar Indian rights and interests, and for similar lands claimed and settled with their neighbor Indians, to wit, to their neighbors on the east, the Chippewas of Minnesota (under act of Congress of January 14, 1889, U. S. Stats., vol. 25, p. 642), the Government is paying to said Chippewas \$1.25 per acre for agricultural lands and from \$5 to \$75 per acre for pine lands according to the estimates of standing pine timber thereon; to their neighbors on the west, the Sioux Nation of Indians or Dakotahs (under act of Congress approved March 2, 1889, U. S. Stats., vol. 25, p. 888), the Government agrees to pay to said Sioux Indians, after allotting to each head of family 320 acres of land; to each single person over 18 years of age one-fourth of a section; to each orphan child under 18 years of age one-fourth of a section, and to each other

person under 18 years, one-eighth of a section, there was appropriated and deposited in the Treasury of the United States to their credit the sum of \$3,000,000 as permanent fund, paying them interest of 5 per cent per annum, and the further sum of 50 cents per acre for all lands undisposed of at the end of ten years from date of said act, by the United States, to actual settlers of said Indian country, which amount shall be added to the credit of said Indians as their permanent fund; to their neighbors on the south, the Sisseton and Wahpeton bands of Dakotahs or Sioux Indians (under act approved February 8, 1887, 26 U. S. Stats., p. 1036, and the proclamation No. 22, 27 U. S. Stats., p. 1017), the Government paid to said Sisseton Indians for the lands remaining after their individual allotments, \$2.50 per acre, besides paying \$80,000 annually to the Arickarees, Gros Ventre, and Mandan Indians for lands ceded under agreement of December 14, 1886 (26 Stats., p. 1032), a great part of which being for lands belonging to said Turtle Mountain Chippewa Indians, in which said Arickarees had no claim or interest whatever.

Your petitioners, the said Turtle Mountain Band of Pembina Chippewa Indians by the undersigned, their duly authorized representative, do hereby respectively pray that said certain agreement concluded between said Turtle Mountain Band of Pembina Chippewa Indians and said commission, appointed under said act of July 13, 1892, with all the proposed amendments to said agreement, be not ratified and be rejected, and that the entire subject of the legal and equitable rights of the Turtle Mountain Band of the Pembina Chippewa Indians be by the Committee on Indian Affairs referred to the Court of Claims under the Bowman Act, entitled "An act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government," approved March 3, 1883 (22 Stats. p. 485), for advice to said committee on the disputed questions of law and fact in the case, for the segregation of their unceded lands and for their relinquishment under the provision of H. R. 2279, Fifty-fifth Congress, first session, to provide for the relinquishment by the Turtle Mountain Band of the Pembina Chippewa Indians of their unceded lands and for other purposes now pending.

J. B. BOTTINEAU,  
*Their Representative and Attorney,*  
 No. 62 C street NW., Washington, D. C.

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EXHIBIT No. 1.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,  
 Washington, May 23, 1878.

*The Honorable the Secretary of the Interior:*

SIR: I have the honor to acknowledge the receipt, by your reference for report, of a letter, dated March 3, 1878, from John B. Bottineau, claiming membership in the tribe, presenting printed argument in favor of the claim of the Pembina Band of Chippewa Indians in Dakota, and asking that steps be taken for their relief.

These Indians, generally designated as the Turtle Mountain Band of Chippewas, claim that their title has never been extinguished to the lands bounded on the east by the west line of the cession in the treaty of October 2, 1863 (13 Stats., 667), on the south by the Cheyenne River and a line extending west from the head waters of the same to the Grand Coteau of the Missouri Ridge, thence north to the national boundary line, embracing a part of the Rivers des Lac and the Mouse River and its valley, and on the north by said boundary line.

They ask that their title to the land within said boundaries be recognized, and that measures be taken to extinguish the same and to settle them upon land heretofore set apart for their use in the White Earth Reservation in Minnesota. Nego-



tiations were had, but without success, at various times prior to 1863, with the Red Lake and Pembina Chippewas, for the extinguishment of their title to the lands north of the Red River in Minnesota and the Cheyenne in Dakota, and bordering the Red River of the North.

On the second of October, 1863, the Hon. Alexander Ramsey, commissioner on the part of the United States, met these Indians at the old crossing of the Red Lake River and completed negotiations whereby the Red Lake and Pembina Indians ceded to the United States, as stated in the treaty, all the lands "now owned by them in the State of Minnesota and in the Territory of Dakota within the following-described boundaries, to wit: Beginning at the point where the international boundary between the United States and the British Possessions intersects the shore of the Lake of the Woods, thence in a direct line southwardly to the head of Thief River; thence down the main channel of said Thief River to its mouth, on the Red Lake River; thence in a southeasterly direction in a direct line toward the head of Wild Rice River to the point where such line would intersect the northwestern boundary of a tract ceded to the United States by a treaty concluded at Washington on the twenty-second day of February, in the year eighteen hundred and fifty-five, with the Mississippi, Pillager, and Lake Winnebagoishish band of Chippewa Indians; thence along the said boundary line of said cession to the mouth of Wild Rice River; thence up the main channel of the Red River to the mouth of the Cheyenne; thence up the main channel of the Cheyenne River to Poplar Grove; thence in a direct line to the 'Place of Stumps,' otherwise called Lake Chicot; thence in a direct line to the head of the main branch of Salt River; thence in a direct line due north to the point where said line would intersect the national boundary aforesaid; thence eastwardly along said boundary to the place of beginning."

Of the territory embraced within said cession the Red Lake Indians claimed that portion east of the Red River and the Pembinas all west of the same.

Considerable discussion was had, as appears from the journal of the proceedings of the council during the negotiations pending the treaty, a copy of an abstract of which is herewith inclosed, as to the boundaries of the territory over which the original title of the Pembinas extended. It was held against the Chippewas that the right of the Sioux to the territory between the Cheyenne and Red rivers, as far north as Goose River, had been recognized in the treaty of Prairie du Chien in 1825. Against this the chiefs urged that the Sioux, Chippewas, and Winnebagoes present at said treaty were set opposite to each other and required to mark where the boundary was; that in *setting their southern boundary Goose River* was fixed by the *commissioners* as a compromise line between them and the Sioux, and that they not only owned the lands ceded but all the country north of the Cheyenne and a line extending west of its head waters to the Missouri Coteau, and thence north, including Mouse River, to the British line. I also inclose an extract from the report of the Hon. Mr. Ramsey, giving a history of his negotiations in the matter, in which, after describing the country acquired by the treaty, he uses the following language:

"On the east of tract the Red River Indians still own a small strip of unceded territory, inclosing the basin of Red Lake. With the exception of a narrow border of 'hard-wood' land around the shore of the lake where the bands now have their homes and raise small crops of corn and potatoes, the tract reserved for their future occupancy, while abounding in game, fish, fields of wild rice, and other resources adapted to the primitive wants of the Indians, is from the nature of the surface, which may be generally described as a series of impassable swales, entirely valueless to a civilized people.

"The Pembina bands, who subsist by buffalo hunting, also retain for themselves a tract of the country claimed by them, embracing some of the favorite pastures of that animal, north and northwest of Devils Lake."

The only treaty provision, or other data conflicting with the claim of the Pembina band to any portion of the territory named, is to be found in the treaty of February 19, 1867, in which the Sisseton and Wahpeton bands of Sioux Indians ceded the right to construct roads, &c., over the lands claimed by them, the same being bounded on the north by Goose River and a line running from the source thereof by the most westerly point of Devils Lake to the Chief Bluff at the head of James River, and within which territory, embracing a small portion of that ceded by the treaty of 1863, a reservation on the south side of Devils Lake was set aside by the treaty of 1867 for said Sioux Indians.

No effort appears to have been made to locate the Pembina bands on a reservation until the year 1871.

In a quotation in Commissioner's Annual Report for 1871, page 593, taken from the report of Agent E. P. Smith, in speaking of these Indians, he says:

"The Red Lake and Pembina bands of Chippewas entered into a joint treaty in 1863, in which they ceded a part of the lands of the Red Lake and all that of the Pembinas, consequently the Pembinas are living in Dakota without any reservation, unless the Department shall recognize the claim of the Turtle Mountain band

of Pembinas, who at the time of the treaty were living west of the line of the ceded territory, and would seem to retain all the natural rights which Indians ever acquire to territory. They ask that this Turtle Mountain country shall be acknowledged to them as their reservation. The whole number of full-blood Pembina Indians will not exceed three hundred. They are a constant annoyance to the settlers at Pembina; a straggling, wretched, houseless people; some of them can be induced to settle at White Earth if provision for their removal can be made. Others will go out into the Turtle Mountains, if they can be allowed to call it their reservation."

In his report for 1873 (see Office Report, 1872, p. 209) Agent Smith says:

"The Pembina band are in much the same deplorable condition as reported last year. They have no reservation in the vicinity where most of them are trying to subsist. A portion of the band live on Turtle Mountain, in Dakota, and claim that there is a portion of their country which they have never yet ceded; and they say they were living there at the time of the cession in 1864, and that their grounds are west of the line of the ceded territory. They ask that their rights in this unceded country may be recognized. According to the theory that has been generally adopted by the Government, I do not see why these Indians have not all the original Indian rights in an unceded territory. Something should be done to help these Indians out of degradation and relieve the settlers that are now coming by rail to Pembina from the annoyance of their begging and pilfering. I recommend that the Department either recognize their right to all the territory on Turtle Mountain, and give them the means to farm there, or purchase a right on White Earth Reservation and order them to remove."

And in reference to this report, on page 24 the Commissioner says:

"The Pembina band reside in Dakota Territory, but are here noticed in connection with the Minnesota Indians because of their being attached to the same agency. They have no reservation, having ceded their lands by treaty made in 1863, but claim title to Turtle Mountain, in Dakota, on which some of them resided at the time of the treaty, and which lies west of the line of the cession then made. They number, the full-bloods, about three hundred and fifty, and the half-breeds about one hundred. They lead a somewhat nomadic life, depending upon the chase for a precarious subsistence, in connection with an annuity from the Government of the United States. This agent recommends that 'the Government either recognize their right to Turtle Mountain and furnish means to change their mode of life, or else obtain a home for them on the White Earth Reservation and order them to remove there.'"

Following this recommendation, by act of March 3, 1873, an appropriation of \$25,000 was made, with which a township of land was purchased in White Earth Reservation for the Pembinas. Ten thousand dollars was also appropriated by the same act to enable them to locate themselves on the township purchased for them.

Their further history, so far as the published reports of this office are concerned, is correctly given on pages 9, 10, and 11 of the argument of Mr. Bottineau.

The board of visitors appointed under the 4th article of the treaty of 1863, in their report for 1871, say:

"The condition of the Pembina Indians, we regret to report, is deplorable and almost hopeless. They are extremely poor, and owing to the scarcity of game their means of subsistence are scanty and precarious. The Turtle Mountains have long been their hunting grounds and have never been ceded to the United States. They regard these mountains, therefore, as their own, and express a strong desire to have a reservation definitely located for them in that region."

Several reports of a similar character have since been made by the board.

Petitions were presented by the citizens of Dakota in 1872-'3, asking the removal of the Pembinas from that Territory, and subsequent to the passage of the act for their settlement at White Earth a portion of them were removed thereto. At the present time 200 out of about 560, the total number of the tribe, are living at White Earth, and the remainder are in the Turtle Mountains, within the territory claimed by them, whence they decline to remove until arrangements are made in regard to the unceded lands.

A delegation of these Indians visited this city in the fall of 1874, and again in the early part of 1876, to arrange for the cession of the lands which they claim, but it does not appear that any records of the conference had with them was ever made.

The only data to be found in the office in this connection are in a letter from this office to agent Stowe, at White Earth, dated December 23, 1875, directing him to advise the Indians not to visit Washington again, as their matters had all been talked over the year before, and in two letters from the Indians themselves, the first dated Dec. 22, 1875, and signed by Little Shell and other chiefs of the band at Turtle Mountain, in which, after referring to the fact that a portion of them were at Washington in 1874, and were assured that they owned the territory in Dakota, but for which negotiations could not be entered into, on account of the absence of Little Shell, their head chief, they state that Little Shell is there with them and ask to

come to this city to complete negotiations for the cession of the Turtle Mountain country. The second letter above referred to was written Aug. 30, 1876, by two of the chiefs of the Pembinas located on White Earth Reservation, in which they call attention to the fact that, if negotiations are entered into for the extinguishment of the Indian title to the Turtle Mountain country, they are jointly interested with the band residing there in the territory to be ceded. I have also received by reference from Hon. H. M. Rice a letter dated January 9th, 1878, from certain of the chiefs of the Turtle Mountain Indians, requesting that negotiations be had with them as contemplated in Senate bill No. 669, 44th Congress, 1st session, and Senate Miscellaneous Document No. 63, same session.

The Turtle Mountain band, as well as the Pembinas now living on the White Earth Reservation, have for a number of years expressed a desire to dispose of their unceded lands and settle at White Earth, but they have been unwilling, as a tribe, to leave the Turtle Mountains or do any act which would compromise their claim to that country.

So strenuously have they insisted on their rights to that section that they have refused to comply with the directions of this office in requiring all of them to remove to White Earth on pain of forfeiture of their annuities, and in the present condition of affairs I can see little hope of settling them on a reservation, or in any manner improving their deplorable condition, until this obstacle is in some manner removed.

It is the desire of this office, and I think that an economical administration of Indian affairs demands, that, so far as may be, the Indians should be consolidated upon a few reservations and in such locations protected entirely from the encroachments of the whites. The Chippewas, when they have been located under favorable circumstances, have made fine progress toward a fair degree of civilization. That portion of the nation now settled on the White Earth Reservation are, under the very wise provisions of the law under which they take individual title to their lands, making commendable advancement, and would afford an excellent example to lead the Turtle Mountain band in the march of improvement. They have expressed their willingness to place themselves under these influences, and, in my judgment, steps should be taken for the extinguishment of their title to the lands claimed, whatever the title may be, and their removal and permanent settlement on the White Earth Reservation, where there is ample room for them.

The House committee having, since the preparation of this report, requested the preparation of a bill looking to the consolidation of the Indians in certain States upon a few reservations, I have, in the preparation of said bill, provided for the necessary negotiations with these Indians, and inclose this report, with copies of the papers referred to herein, for consideration in that connection.

Very respectfully, your obedient servant,

E. A. HAYT, *Commissioner.*

#### EXHIBIT No. 2.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,  
*Washington, February 14, 1882.*

SIR: I have the honor to acknowledge the receipt, by your reference for report, of a letter dated December 29, 1881, from Lieut. H. M. Creel, of the Army, addressed to Hon. William Windom, of the Senate, who, in referring the same to the Department, requests that he may be advised whether any action touching the lands therein referred to is desirable, and if so, what legislation would, in the view of the Department, be expedient.

The object of the writer, Lieutenant Creel, appears to be to secure legislation looking to the extinguishment of the Indian title (which he claims is very imperfect at best) to a vast area of country lying in the northern part of the Territory of Dakota.

As showing, very briefly, the view held by this Bureau in respect of the status of these lands, and the condition and needs of the Indians occupying and claiming them, I beg leave to quote from my annual report to the Department for the year last past (1881) as follows:

#### "TURTLE MOUNTAIN BAND OF CHIPPEWAS IN DAKOTA.

"The unsettled condition of affairs with these Indians has long been a matter of deep concern, not only to the Indians themselves, but to this Bureau as well. Prominent among their troubles is the uncertainty on their part as to the view held by the Government relative to the status of the lands claimed by them, and the purposes of the Department in the matter of their ultimate disposal.

"The tract of country inhabited and claimed by them is north and northwest of Devils Lake, in Dakota, and is estimated to contain 9,500,000 acres. These lands have never been ceded to the United States, and the claim of the Turtle Mountain band to ownership is based upon continuous occupation by them and their ancestors for many generations. That the Indian title to the country in question has never been extinguished or successfully disputed can not be denied, and according to the theory that has been adopted by the Government it would seem that these Indians have all the original rights in an unceded territory. Effort has been made from time to time to remove them to the White Earth Reservation in Minnesota, but they have steadfastly resisted such removal, lest the abandonment of the country claimed by them might be looked upon as a willing relinquishment of their title thereto.

"The condition of these people is deplorable in the extreme; they have no permanent abiding place, are very poor, and, owing to the scarcity of game, which indeed may be said to have almost entirely disappeared, they have only the most scanty means of subsistence. Last year the agent at Devils Lake Agency reported that Chief Little Bull and his people were in great danger of actual starvation. Immigration is fast flowing into the country, to the great discomfort of the Indians, and they desire and have repeatedly asked protection from the Government. That their condition requires the attention of the Government is manifest. Petitions have been presented from both sides, Indians and whites, asking for a settlement of their difficulties, and I propose to make the matter the subject of a special report, with a view to securing early Congressional action looking to their permanent relief.

"I will add that the number of Indians roaming about over this vast area, homeless, destitute, and almost hopeless, is variously estimated at from 500 to 600 full-bloods and 1,000 to 1,500 half-breeds.

"The press of business incident to the assembling of Congress has prevented me thus far from submitting the proposed report relative to the affairs of these Indians, but I gladly seize the opportunity presented in the request of the honorable Senator for information to submit such facts (in addition to the above) and suggestions as will, it is hoped, meet his purposes and be sufficient as affording a basis for appeal to Congress for such legislation as the circumstances would seem to require."

The Pembina Band of Chippewas (of which the Turtle Mountain Indians are a part) have for a long time laid claim to the country hereinbefore referred to.

It appears from the minutes of the treaty of October 2, 1863, with the Red Lake and Pembina Indians, at which time they made a large cession of territory to the United States, that in executing said treaty the Pembina bands retained for themselves a tract of country north and northwest of Devils Lake. In this connection Hon. Alexander Ramsey, who negotiated said treaty on the part of the Government, in his report submitted at the time, says: "The Pembina band, who subsist by buffalo hunting, also retain for themselves a tract of country claimed by them, embracing some of the favorite pastures of that animal north and northwest of Devils Lake."

In 1876 the Turtle Mountain Indians addressed a memorial to Congress praying for the confirmation of their title to these lands, and that some provision be made for their protection, in which their claim was set out as follows:

"Your memorialists, the Turtle Mountain band of Chippewa Indians, respectfully represent that they and their fathers for many generations have inhabited and possessed, as fully and completely as any nation of Indians on this continent have ever possessed any region of country, all that tract of land lying within the following boundaries, to wit: On the north by the boundary between the United States and the British Possessions; on the east by the Red River of the North; on the south their boundary follows Goose River up to the Middle Fork; thence up to the head of Middle Fork; thence west-northwest to the junction of Beaver Lodge and Cheyenne River to its head waters; thence northwest to the head waters of Little Knife River, a tributary of the Missouri River, and thence due north to the boundary between the United States and the British Possessions.

"That their possession of this country has never been successfully disputed by any of the neighboring or other tribes of Indians, but has at all times been recognized as the country of the Turtle Mountain band of the great Chippewa Nation, of which the three Chippewas, Little Shell, grandfather, father, and son, have been principal chiefs for the last fifty years, and that they have never by general council, by their chiefs, or by any authorized delegates, entered into any treaty with the United States by which they ceded any portion of their possessions."

It may be well to state here that if any of the Sioux tribes ever claimed this country, all such claim was relinquished by the treaty of April 29, 1869 (Stat. 15, p. 635), the second article of which, after defining the boundaries of their reservation, provides as follows:

"And henceforth they will and do hereby relinquish all claims or right in and to

## 12 TURTLE MOUNTAIN BAND OF PEMBINA CHIPPEWA INDIANS.

any portion of the United States or Territories except such as is embraced within the limits aforesaid, and as hereinafter provided."

(The subsequent provision does not necessitate a modification of the above statement.)

There is an evident error in the foregoing memorial in respect of the eastern boundary of their claim, for by the treaty of October 2, 1863, before referred to, the Chippewas (including these people) ceded to the United States all the territory owned and claimed by them in Dakota east of a line running in a northeasterly direction from the eastern shore of Devils Lake to the head of the main branch of Salt River; thence due north (a little east of the 98th degree west longitude) to the British Possessions.

The above description is not that given in the treaty precisely, and is only approximately correct, yet it is deemed sufficient for the present purpose.

The boundaries of the unceded Indian country claimed by the Pembina Chippewas, and recognized by this Bureau to the extent indicated in report to Department quoted from in the beginning of this letter, are marked, with approximate accuracy only, upon the map herewith inclosed. As has been seen, its area has been estimated at 9,500,000 acres. As a portion of their original claim was taken for the use of the Fort Berthold Indians, it is not likely that it will now exceed 9,000,000 acres.

It is not at all probable that this territory will ever be needed by the Government for Indian purposes. The Indians now occupying and claiming it do not need more than one-twentieth part thereof, and I am firmly convinced that the entire tract, except, say, 500,000 acres, which should be retained in a compact body for them, should be sold for the benefit of the Turtle Mountain Indians and their brethren now at the White Earth Agency, who should be held and deemed to be as much entitled to share in the benefits arising from such sale as they, the Turtle Mountain band.

It seems to me that these Indians are justly entitled to the recognition of their claim on the part of the Government to the lands in question, and the files and records abound in evidence showing that this office has long recognized such claim.

Not very long ago (in April, 1880), a draft of a bill was prepared here and submitted to the Department, in which it was provided, among other things of like character in respect of other Indians, that "negotiations shall also be extended to and include the Turtle Mountain Chippewas of Dakota for the extinguishment of their title for a certain sum to the unceded lands claimed by them in said (Dakota) Territory;" and a bill has been introduced in the present Congress (by Mr. Washburn, H. R. 3862, introduced February 2) having an object similar to the one just referred to, in which I find precisely the same provision.

In both of these bills it is provided that these Indians shall be consolidated with the other numerous bands of Chippewas upon the White Earth Reservation.

As has been said before, these Indians are unwilling to remove to the White Earth. They appear to be greatly attached to the country so long occupied by them, and they desire to have lands, with a permanent title thereto, somewhere in the vicinity of the Turtle Mountain. It is therefore unlikely that they will consent to so much of the measure as contemplates removal and settlement upon said reservation.

In view of the foregoing I would suggest to the honorable Senator (Windom) the propriety of asking Congress for authority to negotiate with the Pembina Band of Chippewas, and such other Indians as should properly take part in such negotiations, for the cession of all the territory claimed by them in Dakota (except a tract sufficiently large to secure to them allotments in severalty for their permanent settlement, the location thereof to be hereafter determined). And as a suitable compensation for such cession, I would recommend that there be paid to them annually the sum of, say, \$50,000 for the period of twenty years; the Government to reimburse itself out of the proceeds of the sale of the ceded lands.

At 50 cents per acre, assuming the estimated area, after deducting the lands to be retained (8,500,000 acres), to be correct, the proceeds would reach the sum of \$4,250,000; the interest on which amount, at 3 per cent, would be \$127,500. At 25 cents per acre, the amount received would yield \$63,750 at 3 per cent.

If the lands were sold at the minimum price of the public lands (\$1.25 per acre) the amount accruing from such sale would be very great—\$10,625,000.

The Indians need present assistance, and if it could be afforded in the manner suggested, without waiting the long processes usual in the sale of the public lands, it would be immeasurably to their advantage.

I return herewith Lieutenant Creel's letter, with Senator Windom's indorsement, and inclose a copy of this report.

Very respectfully, your obedient servant,

H. PRICE, *Commissioner*

The SECRETARY OF THE INTERIOR.

## EXHIBIT No. 3.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
Washington, June 7, 1882.

SIR: I have the honor to acknowledge the receipt, by your reference for report, of a letter from Mr. George P. Bradstreet, clerk of the Senate Committee on the Judiciary, dated May 29 (ultimo), inclosing, at the suggestion of Mr. McMillan, of the subcommittee, to whom it has been referred, Senate bill No. 925, "A bill to provide for the support and civilization of the Turtle Mountain band of the Pembina Chippewa Indians and to extinguish their title to lands claimed by them in the Territory of Dakota," with the request that said committee be furnished any information that may be in the possession of the Department touching the questions arising under said bill.

In reply, I would respectfully state that this bill, in its original form, was referred to the Department in February last by Mr. Chairman Dawes, of the Committee on Indian Affairs, and this office was called upon and submitted a report thereon to the Department under date March 11 following.

That report is embodied in, and forms the subject-matter for the most part of, House Report No. 1144 (to accompany bill H. R. 1885), a copy of which I inclose for the information of the Senate committee, as being the most convenient for reference.

Since the introduction of the bill, but more especially since the rendition of my report, effort has been made by those specially interested in having the lands to which the bill relates opened to white settlement to show that the Sioux and possibly the Assiniboinés are, or rather were, by reason of occupancy, the real owners of the territory claimed by the Chippewas, and that the claim of the latter to ownership is therefore unwarranted and without foundation, and should in no wise receive recognition.

As the origin of the Chippewa title to these lands is not a matter of record, not having been vested by statute or treaty provision, and as their claim is based wholly upon those natural rights which have ever been recognized as belonging to the Indians in respect of unceded territory, I have endeavored to determine, by careful examination of office records and correspondence, reports of explorations, military and civil, old maps, etc., the actual merits of the claim set up by the Chippewas to the lands in question, and at the same time whether either the Sioux or Assiniboinés, as claimed, have any title to or interest in any portion of said lands.

Before proceeding to the consideration of the subject, however, I desire to say that it is not improbable that the suggestion in my report to the department, dated February 14, to which reference has been made, that "if any of the Sioux tribe ever claimed this country all such claim was relinquished by the treaty of April 29, 1868," may have strengthened the opinion of those who are, very properly, interested in opening the lands in question to settlement, if, indeed, it did not suggest the idea, that the Sioux were perhaps the more rightful claimants to the territory claimed by the Chippewas.

(Were a claim established in favor of the Sioux all obstacles were removed, for, by the second article of the above-mentioned treaty, the Sioux relinquished all claims or right in and to any portion of the United States or Territories, except such as was embraced within the limits of a permanent reservation (established under said treaty) far removed from the lands now the subject of consideration.)

If such is the case, I would simply say that it was not my intention, in making the statement referred to, to convey the impression that the office acknowledges that as a fact the Sioux have at any time laid claim to the territory under discussion. Not at all. This office is in possession of no evidence showing that the Sioux ever laid claim to that part of the country. It must be remembered that the Sioux were for years the most powerful and warlike tribe on the plains, that they waged inveterate and bloody warfare against many of their neighboring tribes, and that in their arrogance and power they did not hesitate to extend their claims to territory anywhere as best suited their pride, inclination, or convenience.

With Indians, as with other people, it is one thing to claim, and another thing to maintain or establish a claim.

Of all the wars waged by the Sioux none have ever been so protracted and bloody as those against the Chippewas. They were hereditary enemies. Their hunting grounds adjoined, and interminable war was the consequence. Had the various Sioux tribes at any time united against the Chippewas, undoubtedly, by great superiority of numbers, they might have gained a foothold in the Chippewa country from which they could not have been driven; but it appears the Sioux were never so united, and the Chippewas consequently held their ground, if they did not extend their territory.

The very language of the article of the treaty to which I have referred indicates, I think, that the Sioux were not accredited with having always been unpretentious in their claims to territory, to say the least. The language there used is not often employed in treaties. Generally it has been found that the claims of a tribe or nation could be determined and described by metes and bounds. Not so in the case of the Sioux, as the language of the treaty clearly indicates.

I have said this much in explanation of the statement above referred to.

Perhaps the most important evidence at hand, touching the matter to which our attention is directed, is to be found in the report of a commission appointed by the Secretary of the Interior under the provisions of the act of June 7, 1872 (17 Stats., p. 281), to investigate the title and interest of the Sisseton and Wahpeton bands of Sioux Indians to the lands mentioned in article 2 of the treaty concluded with said Indians February 19, 1867.

By the terms of said treaty (2 article) the Sisseton and Wahpeton bands ceded to the United States the right to construct wagon roads, railroads, mail stations, etc., over and across the lands claimed by them, said lands so claimed being described as follows: Bounded on the south and east by the treaty line of 1851 and the Red River of the North to the mouth of Goose River; on the north by the Goose River and a line running from the source thereof by the most westerly point of Devils Lake to the Chief's Bluff, at the head of James River; and on the west by the James River to the mouth of Mocosin River, and thence to Kampeska Lake (designated on accompanying map by red lines).

Some doubt having arisen thereafter as to the right of said Indians to claim exclusive occupancy of all the territory thus described, the commission above referred to, consisting of Messrs. Moses N. Adams, William H. Forbes, and James Smith, jr., was appointed to examine and report what title or interest the said Indians had to the lands mentioned in said article described as above.

The commission assembled at Lake Traverse Agency on the 18th day of September, 1872, and made final report of their proceedings and investigations under date October 3 following.

I quote the following from said report:

"Upon consideration of the premises, we find and report, as matters of fact, that the Sioux Indians, of which the Sisseton and Wahpeton bands form a part, have claimed the country west of the Mississippi, and southerly of Devils Lake, embracing the region described in article 2 of said treaty [treaty of February 19, 1867], as belonging to them, while the Chippewa Indians have also, prior to the time of said treaty, set up a claim to a portion of the northern part of the same country.

"The extent of the original claim of the Sioux Indians is embraced in a paper presented by Wahnah, hereditary chief of the Sisseton and Cut-Head bands of the Yankton Sioux, which is as follows, to wit:

"We, Ojounpay (Sweet Corn), son of Ojounpay, second chief of Sisseton and Yankton tribe of Dakotas, and Wahnah (he who rushes on), son of Wahnah, first chief of the Sisseton and Yankton tribe of Dakotas, do hereby declare that we intend to abide by the articles of the treaty entered into by our fathers, represented by Chief Wahnah, with the Chippewas, represented by Chief Emay-daskah (Flat mouth), at Prairie du Chien, about thirty-three years ago, by which treaty the boundary line dividing the lands of the two nations (the Chippewas and Dakotas) was established and agreed upon.

"We furthermore declare that it is within our recollection that after the above treaty was agreed upon the boundary line has ever been known by us and our people to have been as follows: Commencing at the mouth of the river Wahtab, then ascending its course and running through Wahtab Lake; from thence taking a westerly course and passing through the fork of Sauk River; thence running in a northerly direction through Ottortail Lake and striking the Red River at the mouth of Buffalo River; then following the course of Red River down to the mouth of Goose River; then ascending the course of Goose River up to its source; then taking a due westerly course and passing through the center of Devils Lake; after leaving the lake, continuing its westerly course to Maison du Chien; from thence taking a north-westerly direction to its terminus at a point on the Missouri River, within gunshot sound of Little Knife River." (Designated on map by green lines.)

"This paper is without date, but bears evidence of having been in the possession of the Indians for a considerable period of time. It was probably drawn for them by some traders and is shown, so far as their statements can be relied upon, to have been in possession of the chief for over thirty years.

"It has, however, only been considered by us as tending to show their territorial claim at and before the time of making the treaty of February 19, 1867.

"We find that these Indians, Sisseton and Wahpeton and other bands, occasionally hunted over the territory in question and claimed it as their hunting ground, and it is equally certain that the Chippewa Indians occasionally, in hunting and war parties, passed over the northern portion of it.

"That in 1862 the bands of Sioux Indians other than the Sisseton and Wahpeton bands, claiming a common interest in the territory in question, abandoned the country, so that in fact the Sisseton and Wahpeton bands and Cut-Heads, represented by Wahnahpah, were the only bands within the country in question that maintained a tribal organization.

"The nature and extent of the Indian title to lands occupied by them in what is known as the 'Indian Country,' as well as the title of the United States to the same, is settled, it appears to us, by the action of the Government, legislation of Congress, and the adjudication of the courts.

"The occupancy by the Indians is a legal occupancy—"the right to occupy the soil, with a just claim to retain it and use it according to their discretion."

"The hunting grounds of the Indian tribes are to be regarded as much in their possession as the cleared fields of the whites are to be regarded in theirs; the legal title being in the United States, with the exclusive right to purchase or extinguish the Indian title; such legal title being subject to the possessory rights or occupancy of the Indians. (Johnson *v.* McIntosh, 8 Wheaton, 543; Worcester *v.* State of Georgia, 6 Peters, 515; Mitchell *v.* United States, 6 Peters, Rep. 711 to 745, inclusive, 3 Kent's Com., 461 to 463.)" \* \* \*

Upon the report of said commission Congress, by act of June 22, 1874 (18 Stats., p. 167), in confirming the agreement entered into with the Sisseton and Wahpeton bands, virtually acknowledged and confirmed the claim of said Indians to the lands described in article 2 aforesaid.

It appears, then, that the first and one of the most important duties that engaged the attention of the said commissioners was the determination of the boundary lines between the Sioux and Chippewa country.

In pursuing their investigations they found that the Sioux Indians had claimed and did claim the country southerly of Devils Lake, embracing the region described in article 2 of the treaty of 1867; that the extent of their original claim did not cover any territory north of said lake, and that they had by solemn treaty with the Chippewas, entered into more than forty years ago, so agreed and declared.

The subsequent action of Congress in confirming the agreement made by and between the said commissioners and the Sisseton and Wahpeton bands must be considered as having forever settled the disputed boundary question between the Sioux and Chippewas.

Further, a treaty was concluded at Fort Laramie in 1851 between commissioners specially authorized by the President and the following tribes of Indians residing south of the Mission River and east of the Rocky Mountains, viz: The Sioux or Dakotahs, Cheyennes, Arapahoes, Crows, Assiniboines, Gros Ventre, Mandans, and Arickarees. By this treaty the aforesaid Indian nations agreed to recognize and acknowledge certain tracts of country (described in the treaty by metes and bounds) as their respective boundaries.

These national domains are indicated upon the accompanying map in blue, and it will be seen upon examination that none of the aforesaid tribes extended their claims to the region now claimed by the Chippewas.

It is true the Laramie treaty was never ratified by Congress, but it has, nevertheless, been frequently referred to in appropriations and other treaties. At least it serves to indicate that neither the Sioux nor other tribes south of the Missouri claimed at that time lands between Devils Lake and the British Possessions.

Upon the maps of the United States published by H. S. Tanner, from 1832 to 1839, on which the Indians of the western country are noted, I find that the territory west of the Red River and north and northwest of Devils Lake is given to the Chippewas, as well as their unquestioned locations east of said river. (See accompanying map.)

Dr. R. V. Hayden, in his Contributions to the Ethnography and Philology of the Indian Tribes of the Missouri Valley (p. 364), says:

"The country claimed by the Great Sioux or Dakota Nation, prior to the organization of the Territories of Nebraska, Dakota, and Minnesota, was very extensive. Commencing on the northeastern limit at Lac qui Parle, an imaginary line would run in a northwest direction, taking in Lac du Diable (Devils Lake), thence inclining south by west, including Turtle Mountain and the head of the Pembina River, would strike the Missouri at the mouth of the Apple River, below the Gros Ventre village. Crossing the Missouri, it would proceed up the Grand River of the Arickarees (or even some distance west of this river), bearing west by south until reaching near the head of Powder River. From this point it would continue along the range of mountains called the Black Hills in a southern direction," etc. (The Territories above referred to, Nebraska, Dakota, and Minnesota, were organized in 1854, 1861, and 1849, respectively.)

There is an evident incongruity of statement in the description given by Dr. Hayden in respect of the northern boundary of the Sioux claim. It is impossible that a line running "south by west" from Devils Lake could take in "Turtle Mountain



and the head of Pembina River." This view of the case is corroborated by a statement of the author on page 381, where, treating of the Assiniboinés, he says:

"As has been stated, at the earliest date known they (the Assiniboinés) roved about the sources of the St. Peters and Des Moines rivers, Lac du Diable, Lac qui Parle, etc., and were there joined with the Dakotas proper, who inhabited and claimed all the land between the Mississippi and Missouri, as low down as Big Sioux River, reaching to the source of James River, and stretching thence northward as far as Lac du Diable."

(The Sioux claim as first stated is indicated on the map by brown lines; as secondly stated in yellow.) It will be readily seen that the two statements substantially agree as to the northern limit of the Sioux claim if the confusing and inconsistent clause in the first be disregarded.

More than thirty years ago (September 20, 1851) Hon. Alexander Ramsey, on the part of the Government, concluded a treaty with the Red Lake and Pembina Chippewas for the cession of a tract of country about 120 miles in length by 65 miles in breadth, intersected near its center by the Red River of the North. The southern and western boundary of that part of the cession lying west of Red River was described as follows:

"Up said (Goose) river to its most westwardly source, following the south branch thereof, thence northwardly in a direct line to strike a point on the international boundary line 5 miles west of the Grand Cote." (See broken line on the accompanying map.)

Governor Ramsey found that there were at that time some 300 Chippewas living west of the ceded territory. In the official report of his negotiations he says, touching this subject:

"Not more than 300 Chippewas roam beyond the western boundary of the present cession, and it is thought it would not be difficult to induce them to unite with the rest of the tribe whenever it is concentrated in the manner proposed." (Treaty was never ratified by Congress.)

This in 1851. Subsequently (in 1863) when the Red Lake and Pembina bands ceded to the Government the lands (colored yellow on map) in the valley of the Red River, and as far west at least as the cession line of 1851, they retained for themselves a tract of country claimed by them, embracing some of the favorite pastures of the buffalo north and northwest of Devils Lake (see my report February 14 herewith). This I think strong evidence in favor of the Chippewas.

It is not denied that the Sioux have in years past, in their war and hunting expeditions, penetrated the country west of Red River as far north as the British line, and even into the British Possessions. They have frequently sought refuge beyond the boundary line when pursued by our troops; but that they have occupied the country north of Devils Lake, in any sense that would warrant them in setting up a claim to ownership, or that they have ever pretended to claim any portion of said country, does not appear.

A board of visitors appointed by the Department, under the provisions of the sixth article of the treaty of October 2, 1863, with the Red Lake and Pembina Band of Chippewas, in their report dated October 20, 1871, make special mention of the claim of the Chippewas to the Turtle Mountain country. I quote therefrom as follows:

"The condition of the Pembina Indians, we regret to report, is deplorable and almost hopeless. They are extremely poor, and owing to the scarcity of game their means of subsistence are scanty and precarious. Although by the joint treaty with the Red Lake Indians they have a claim upon the Red Lake Reservation, the feeling which exists between the two tribes is such that they can gain no advantage from it; they cling with tenacity also to their old homes. The Turtle Mountains of Dakota have long been their hunting grounds, and have never been ceded to the United States. They regard these mountains, therefore, as their own, and express a strong desire to have a reservation definitely located for them in that region before white settlers shall further encroach upon them."

Hon. E. P. Smith, who was agent for the Chippewas previous to his administration of the affairs of this bureau, says in his annual report for 1872:

"The Pembina band are in much the same deplorable condition as reported last year. They have no reservation in the vicinity where they are trying to subsist. A portion of the band live on Turtle Mountain, in Dakota, and claim that that is a portion of their country which they have never yet ceded, and they say they were living there at the time of the cession in 1864 (1863), and that their grounds are west of the line of the ceded territory. They ask that their rights in this unceded country may be recognized. According to the theory that has been generally adopted by the Government, I do not see why these Indians have not all the original Indian rights in an uncaded territory."

Two years later (1874) in his annual report to the Department, Commissioner Smith says:

"The Peminas have been notified to remove to White Earth on penalty of for-

feiting their annuity. A few only have complied, but these have fallen readily into line with the others in self-support by labor. The remainder are still around Fort Pembina and on Turtle Mountain, Dakota, leading a wretched, vagrant life.

"The Turtle Mountain Band of Pembinas, living west of the line of cession of Indian lands under the treaty with the Red Lake and Pembinas, 1864 [1863], claim that they are entitled to compensation for the country which they relinquish when they remove to White Earth."

And now, as regards any interest that the Assiniboinnes are alleged or thought to have in any portion of the lands claimed by the Chippewas, I have to say that from all the evidence at hand it would appear that the Assiniboinnes claim no land east of the White Earth River.

Originally they were a part of the great Dakota or Sioux Nation, and resided upon the tributary streams of the Mississippi, as the head of the Des Moines, St. Peters, and other rivers. It appears that they separated from the Sioux more than a hundred years ago and emigrated to the country about the Saskatchewan and Assiniboine rivers. They have long kept up friendly intercourse with the Chippewas, and are more or less intermarried with them; hence, no doubt, the impression that prevails among some that they might possibly be able to set up a fair claim to a portion of the country claimed by the Chippewas.

There are several other distinct tribes or bands of Indians living immediately west of the country claimed by the Chippewas, as the Gros Ventres, Arickarees, and Mandans. They live in villages and have permanent abodes. In years past they have been at war with neighboring tribes, and it is said that, in small parties, they have at times extended their incursions as far east as Minnesota against the Chippewas. This was very many years ago, however.

They have depended largely, though not entirely, as in the case of other Indians in that section, upon the chase for their subsistence, and no doubt have roamed the country west and north of Devils Lake at will in pursuit of the buffalo, and perhaps even farther east, but I fail to find any evidence of their ever having laid claim to any part of the country.

In conclusion, I would submit that it has always been understood and held that the lands lying west of the Chippewa cession of 1863 and north and northwest of the line of the Sisseton and Wahpeton Indian country, as defined in article 2 of the treaty with those Indians of February 19, 1867, have never been ceded to the United States.

Undoubtedly the original Indian title embraced this country, and it does not appear that it has ever been extinguished by treaty or otherwise.

The Government has from the beginning pursued a uniform course of extinguishing the Indian title, which is well settled to be the right of occupancy alone (except when a higher title has been vested by statute or treaty provision), yet with a just and perfect claim to remain in the possession and enjoyment of their lands until they choose to part with them.

Their rights have been restricted only in this, that they could not dispose of their lands by sale or otherwise except to the United States.

Of this unceded country the Pembina Band of Chippewas claim from the cession line of 1863 to a point somewhere west of the Turtle Mountains. There appears to be some confusion as to the western limit of their claim.

In the memorial addressed to Congress in 1867 by the Turtle Mountain Band of Pembinas the western boundary of their claim is stated to be "northwest (from the headwaters of the Cheyenne River) to the headwaters of Little Knife River, a tributary of the Missouri River, and thence due north to the boundary between the United States and the British Possessions." (See my report of February 14 herewith—broken line on map.)

Governor Alexander Ramsey, in the report of his negotiations with the Chippewas in 1863, when the Red River country was ceded to the Government, remarks as follows (referring to the Pembina band):

"Inquiries were made as to the boundaries of the country claimed by them. They claimed all the country north of the line described by Little Rock as the northern boundary of the Red Lake Indians and extending west to Devils Lake to the Missouri Coteau and Mouse River.

"A more particular description of the country claimed by them is as follows:  
\* \* \* Thence up the main channel of the Cheyenne River to a point about which they could not agree among themselves, to Dog House, a hill on the Missouri Coteau; thence along Mouse River to the British boundary. \* \* \* (Broken green line on map.)

"They proposed to reserve all the country west of a line running from the Poplar Grove to the head of Salt River, and thence due north to the British boundary, as a hunting ground."

If doubt remains as to the validity of the claim of the Chippewas to the exclusive occupancy of all the territory claimed by them, I would suggest that the bill under

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consideration might be so amended as to authorize the commissioners, whose appointment is contemplated by the terms thereof, to examine as to the title or interest of said Indians in said territory before entering into negotiations with them.

I inclose a copy of this report.

Very respectfully, your obedient servant,

H. PRICE, *Commissioner*.

The SECRETARY OF THE INTERIOR.

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### EXHIBIT No. 4.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
Washington, Sept. 21, 1891.

*The Honorable the Secretary of the Interior.*

SIR: I have the honor to acknowledge the receipt, by your reference for "consideration in connection with report of Commissioners for Turtle Mountain Indians and report," of a communication of August 22, 1891, from J. B. Bottineau, attorney for the Turtle Mountain Band of Chippewa Indians, submitting a printed copy of a preamble and resolutions adopted by that band January 7, 1891, in which their claims and needs are set forth, and asking your assistance and counsel in deliberating upon the matters to which these resolutions relate, for the best interest of the Indians and the Government; also that he be furnished with a copy of the reports of the "Indian Commissioners appointed to negotiate with the Turtle Mountain Chippewa Indians, of which Hon. A. H. Mahone was chairman, and with a copy of such papers as were filed by said Indians or any other person on their behalf, and that I may be allowed to examine all papers and other documents on file and of record relative to and pertaining to the business of said Indians which this office may deem necessary for me to know and for my guidance and assistance in the premises."

The opening paragraph of the paper submitted by Mr. Bottineau sets forth that, "in the absence of the act of Congress authorizing the appointment of said board of United States Commissioners, and without the knowledge as to what particular subject-matter, and the extent of the power to them given by said act of Congress, to negotiate with us; whether for the extinguishment of our title to land, or for the removal therefrom. Whichsoever, we propose to remain here at home. Hence this preamble."

It then proceeds to set forth the claim of the Turtle Mountain band to an interest in a section of country covering an area of about nine millions of acres, the original Indian title to which, it is alleged, is still outstanding in the Pembina bands of Chippewa Indians, referring to reports by the Commissioner of Indian Affairs to the Secretary of the Interior, and certain treaties as recognizing this claim. All the reports referred to are doubtless on file in one of the divisions of your office.

Referring to a statement in a report of May 23, 1878, from this office, on the rights of the Pembina bands of Chippewas in the country claimed by them, that "the only treaty, provision, or other data conflicting with the claims of the Pembina bands to any portion of the territory named is to be found in the treaty of February 19, 1867" (15 Stats., 505), with the Sisseton and Wahpeton bands of Sioux, who ceded to the United States certain rights of way over lands embraced within the same, attention is called, in the paper submitted by Mr. Bottineau, to the preamble to the agreement of September 20, 1872 (Revis. Ind. Trs., 1051), with the Sisseton and Wahpeton bands of Sioux, in the preamble to which it is stated in the treaty of 1867, above referred to, that these bands of "Indians ceded to the United States certain privileges and rights supposed to belong to said bands in the territory described in article two (2) of said treaty," and it is claimed that the phraseology here used casts a suspicion upon the title of the Sioux to this country.

On pages three and four of the resolution of the Turtle Mountain Indians, at the conclusion of references to reports by this office and treaties bearing on their claim, it is stated that, attracted by the adaptability of the country in "northwestern Dakota" to wheat and stock raising, large numbers of immigrants have in the last ten years entered that country and extended their settlements to and upon the lands claimed by them; that at great trouble and expense, both to the Government and the Indians, several delegations have been sent, and repeated appeals and petitions made to the United States, but "nothing has resulted towards a settlement of our claims, and the whites are still invading our country;" that they have suffered greatly for a number of years from the effects of starvation and nakedness while endeavoring to preserve and maintain their right to the lands and country upon which they have lived for many generations past, and wherein a great many of their

people are now resting in their graves; that they have endured this suffering without disturbing or molesting their white friends, notwithstanding encroachments upon and usurpation of their rights by the whites have continued; that they are a peacefully disposed people and have lived and died in the hope that the day of betterment was soon coming, and without avail; that they do not believe in dancing and feasting on settlers' cattle, and shall always live in peace with the whites, "but we have resolved to live and die here at our old home, the Turtle Mountain country, and we demand the recognition and final settlement for our lands and that we be provided with a reservation therefrom without further or any unnecessary delay."

"We also demand immediate relief, by way of subsistence and clothing, pending the final settlement and the extinguishment of our title to these lands."

In view of the allegations that white people are constantly taking up lands within the territory claimed by the Indians, encroaching upon the claims taken thereon by members of the band, and destroying the timber growing upon lands within the country, the Turtle Mountain band demands that an executive order be at once issued withdrawing a portion of those lands from market and settlement, suspending all entries therein, and stopping the further destruction of the timber, and that the same be and remain Indian lands to our use, for the purpose aforesaid, bounded as follows, to wit:

"Commencing on the national boundary line between the United States and the British possessions at the intersection of the north and south line between townships No. 69 and 70 west of the 5th prn. mer.; thence due south from said national boundary on said township line to the line of the 15th standard parallel next south of said boundary; thence due west on the line of said standard parallel to the southwest corner of township No. 161, of range 75 west of 5th prn. mer.; thence due north on said township line to said national boundary; thence east on said national boundary line to place of beginning."

In the concluding portion of the paper Mr. Bottineau, a member of the band, is stated to be appointed the attorney in fact for it to prosecute the claims of these Indians.

The principal features of the paper for consideration are:

*First.* The alleged determination of the Indians to remain in the Turtle Mountain country, which they seem to regard as their ancestral home.

*Second.* Their claim to a large section of country under the original Indian title.

*Third.* Their demand for a settlement of this claim, and for relief in the way of subsistence and clothing pending such settlement; and

*Fourth.* That an extensive reservation be set apart out of the country claimed for their use and occupancy by an executive order.

As to the alleged determination of the Indians to remain in the Turtle Mountain country, I have to say that I am in receipt of a letter, dated Wolf Point, Montana, August 28, 1891, from Little Shell, the head chief of the Little Mountain band, in which he alleges that he was promised by the Turtle Mountain commission that if he would relinquish his claim on the Turtle Mountain Reservation he would be provided with another and paid the difference in value; that he was told by that commission to look over the country and locate a place, and it would see that he would receive a reservation for his people; that he is at present visiting his uncle, "Red Stone," chief of the Assinnaboines; that if it can possibly be arranged he would like to have a strip of land on the Missouri River above the mouth of Milk River, twenty-five miles wide and thirty miles long, on the north side of the Missouri River; that the most of his tribe with him are not contented to live at the Turtle Mountain, and all would be better satisfied with the location he speaks of; that the lands of Turtle Mountain are much more valuable to the white man than that on which he wishes to locate, and for this reason he would expect the Government to pay the difference in cash or otherwise; that he makes this proposition so that this matter can be settled for all time; that he can never live at Turtle Mountain again under the circumstances, and knowing that the Government has at all times been willing to render a helping hand to the Indian, he hopes his offer of exchange will be considered and his request be granted; and that he has never signed his name to any treaty giving the Government his land at Turtle Mountain, and he never will do so until he is located with his people on a reservation of their own at least twenty-five miles square.

This communication from Little Shell was received in this office on the same day that Mr. Bottineau's letter on the subject was received by reference from the Department, and doubtless Mr. Bottineau was not aware of the change that appears to have come over the minds of the Indians with respect to their removal from Turtle Mountain. The result is, by resolutions purporting to have been adopted by the Turtle Mountain band in council January 7, 1891, the members thereof express their determination to remain at their old home, and demand that a larger reservation be established there for their use, and on August 28, 1891, the head chief of the band, claiming to represent the wishes of most of his tribe, states that they are not content to live at Turtle Mountain, and that all would be better satisfied with a reservation located on the Missouri River, in Montana.

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The reservation requested at Turtle Mountain would contain 446,670 acres, or a little over nineteen townships, two of which are now reserved for these Indians, and the reservation asked for by Little Shell in Montana would be twenty-one townships, or 483,840 acres in extent.

As to the desired extension of the reservation at Turtle Mountain, I have to say that it is more than probable many settlements, and possibly entries, have been made by whites upon the lands desired by the Indians, whose prior rights therein would be entitled to consideration. Besides this, much trouble has been experienced by the Government in giving relief to and in administering the affairs of these Indians, on account of their proximity to the international boundary and their close relationship to Indians belonging across the line within the British Possessions. For these reasons it has been almost impossible to determine with any degree of certainty the exact number of Indians who are members of the band and entitled to the protection of our Government. This difficulty was experienced by the late "Turtle Mountain Commission" in taking the census of the band, and in its report it was fully set forth. The expressions of the commissioners on this subject will be found quoted at page 11 in the report of this office, in which the report of said commissioners was discussed, and which is now on file in your office. In addition to these objections to giving the Indians the reservation in Dakota that they ask for, I am of the opinion that the people in that vicinity, especially those occupying the country asked for, would be so opposed to it that it would be difficult for the Government to prevent conflicts between them and the whites.

I have before me now a copy of the Turtle Mountain Times (herewith inclosed), a paper published at Dunseith, North Dakota, in which appears an editorial article charging that half-breeds have been and are being induced to come over from Canada, and are occupying some of the best land in the county (Rolette County, N. D.); that some of them have voted at elections, but all refuse to pay taxes; that no demand for payment of taxes has been made upon the Indians and half-breeds who are entitled to be on the reservation; that the foreign half-breeds are so increasing in number as to crowd the Indians off the reservation; that when any trouble arises with the "breeds" those living on the reservation would join in, thereby defeating the officers of the law and causing great uneasiness among the white settlers, "as it is known that a great many of the 'breeds' belong on the other side of the line and took part in the Riel rebellion," and calling upon the people in the Turtle Mountain country to sign a petition to this Department asking that the Turtle Mountain Reservation be abolished.

Those are the sentiments obtaining among the people in the vicinity of the Turtle Mountain Reservation, and I do not think that the reserve should be enlarged to accommodate half-breeds. If they are entitled to land from this Government they should take allotments or homesteads from the public domain and earn their own support.

The lands in Montana desired by Little Shell for a reservation lie north of the Missouri River, directly west of the Fort Peck Reservation, on the ceded portion of the great Blackfeet Reservation in that State. The cession of portions of the Blackfeet Reservation was, in response to demands of settlers for land, secured by the Government at great expense and after much trouble, and I would not recommend, except in a case of great emergency, that any portion of the ceded lands be again set apart as an Indian reservation. Besides this, to enlarge the present Turtle Mountain Reservation, as suggested by Mr. Pottineau, or to give the Turtle Mountain Indians a new reservation in Montana, as requested by Little Shell, would be in opposition to the policy of the Government to reduce, as far as practicable, and not to enlarge, the area occupied by Indian reservations.

The Fort Peck Reservation, upon which Little Shell and a part of his band are visiting their relatives, the Assinaboines, contains one million seven hundred and seventy-six thousand acres of land, and is occupied by about three thousand Indians. Under the agreement with these Indians ratified by act of Congress of May 1, 1888 (25 Stats., 113), these Indians have the right to receive allotments from their reservation in quantities, as provided by the general allotment act (24 Stats., 388), which will require an average of about eighty acres for each Indian. This will take about two hundred and fifty acres of land to make the allotment, leaving a surplus of fifteen hundred thousand acres—more than enough land to give the Turtle Mountain Indians a large reservation within the Fort Peck Reserve.

There are other reservations which are large enough to give these Indians a sufficient reservation and to make allotments to those occupying them, but I have called particular attention to the Fort Peck Reserve on account of the fact that the Indians located thereon, or a part of them at least, are related to the Turtle Mountain band, and would probably raise no objection to having their relatives occupy the reservation with them.

It is probable that a discreet and properly constituted commission could secure the consent of the Fort Peck Indians for the settlement of the Turtle Mountain band

upon a portion of their reservation, which proposition I am led to believe, from Little Shell's letter, that band will entertain and perhaps accept for a reasonable consideration.

In 1882 the Secretary of the Interior, Mr. Teller, considered the claim of the Turtle Mountain Indians to the tract of country now claimed by them, and in a letter of October 4, 1882, to the Commissioner of the General Land Office directing the extension of the public surveys over the region covered by this claim, expressed his views as to its status as follows:

"I am of the opinion that the claim is not well founded, yet if it should appear on careful examination of the facts that such a claim does exist it will be the duty of the Government to make proper compensation to the Indians. I do not think nearly 10,000,000 acres of valuable land, on which a great number of settlers are now located, \* \* \* should be withheld from the operation of the homestead and preemption law because a question has been raised whether the small band of Indians (not exceeding three hundred) have a claim on this land or not. It is not contended by anyone that the Government has recognized this claim of the Indians by treaty with them, and the Indians make no use of the land except to roam over it, not cultivating, I think, any of it."

Subsequently, on January 28, 1886, the Commissioner of the General Land Office suspended all contracts for surveys of lands in this region, alleging as the reason therefor the "present status of the Indian claims to said lands, added to the presumption that the whole question will be submitted to Congress for requisite legislation as to the regular extinguishment of the Indian title, and their proper compensation therefor."

From this suspension one of the contractors appealed to the Department, and the report of the Commissioner of the General Land Office of April 26, 1886, thereon, together with other reports on the subject from him, was referred to this office for an expression of opinion as to the title of the Indians to the lands involved.

Upon these papers this office submitted a report February 17, 1887, in which the opinion was expressed that the claim of these Indians, if they have any, can only finally be adjudicated and determined by the legislative branch of the Government, and that it should not be considered by the Executive as a bar to the further settlement and development of the country to which it extended; and it was submitted for the consideration of the Department "whether it would not be best to remove all restriction as to the settlement of this country by resuming survey and permitting entry, leaving the claim of the Indians to be finally settled by Congress."

Upon this report Acting Secretary Muldrow, without determining whether or not the claim of the Indians was well founded, directed, in a letter of April 4, 1887, to the Commissioner of the General Land Office, that the surveys authorized by Secretary Teller in 1882 be continued.

The Department rulings, so far as they have given any expression upon the merits of the claim of these Indians to any valid title to the lands referred to, have been adverse thereto, though I do not know that any formal and final decision on the question has ever been made.

Under a provision of the Indian appropriation act of August 19, 1889 (26 Stats., p. 354), a commission of three persons was appointed with a view to negotiating with these Indians for a cession by them of whatever right or interest they may have in and to any and all land in North Dakota; for their removal to and settlement upon the White Earth Reservation, or other lands reserved for the Chippewas of Minnesota, and for obtaining the consent of the Minnesota Chippewas thereto.

The report of this commission, which is dated February 9, 1891, was discussed in office report of May 18, 1891, which is now on file in the Department. None of the objects for which the commission was established were accomplished by it, and for this reason it was suggested that "it might be well to allow the agent at Devils Lake Agency, who has charge of the Turtle Mountain Indians, to obtain from said Indians and submit to this office any propositions they may desire to make in regard to their affairs," and that if "you concur in this suggestion I will prepare a letter to the agent instructing him in accordance therewith and submit the same for your approval."

In your letter of May 25, 1891, to this office on the subject, you directed that the agent be instructed accordingly; and by letter of May 29, 1891 (copy inclosed), he was so instructed. No reply from the agent to this letter has as yet been received.

As stated in Mr. Teller's letter of October 4, 1882, to the General Land Office, above referred to, the United States has never recognized the claim of the Turtle Mountain Indians to the country claimed in any treaty with them, and they have no funds out of which the Government can provide for their support and civilization. Whatever moneys, therefore, that may have been or may be expended for their benefit by the Government must be purely gratuitous and dependent entirely upon the will of Congress.

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The following sums have been appropriated for the support and civilization of these Indians since 1884:

For the fiscal year 1884, nine thousand dollars; 1885, five thousand dollars; 1886, five thousand dollars; 1887, seven thousand dollars; 1888, seven thousand dollars; 1889, seven thousand dollars; 1890, thirteen thousand dollars; 1891, thirteen thousand dollars; and for the current fiscal year, thirteen thousand dollars, making in all appropriated for nine years a total sum of seventy-four thousand dollars. Of this sum there has been expended for the support and civilization of the Turtle Mountain Indians during the fiscal years 1884 to 1891, both inclusive, the sum sixty-two thousand four hundred and fifty-seven (\$62,457.50) dollars and fifty cents, as follows: For 1884, \$8,885.71; 1885, \$4,975.10; 1886, \$4,618.35; 1887, \$5,930.66; 1888, \$6,975.10; 1889, \$6,965; 1890, \$11,994.50; and 1891, \$12,013.08.

Besides the sums appropriated and expended by the Government for the support and civilization of these Indians as above set forth, there have been expended from appropriations for relief of destitute Indians, in furnishing relief to the Turtle Mountain Indians in the past five years, the total sum of eleven thousand dollars. Of this sum, three thousand dollars was paid out in 1886, three thousand dollars in 1888, and five thousand dollars in 1889, and in 1890 two thousand were diverted from appropriation for support of Arapahoes, Cheyennes, Apaches, Kiowas, Comanches, and Wichitas to furnish subsistence for these Indians.

In all the Government has used for the benefit of these Indians since 1884, up to and including the fiscal year of 1891, seventy-five thousand four hundred and fifty-seven (\$75,457.50) dollars and fifty cents.

Inasmuch, therefore, as these Indians have no moneys of their own, and appear to be unable to earn sufficient upon which to subsist, and the Government is called upon to furnish money gratuitously for their support each year, I submit that, whether or not their claim to lands in Dakota is well founded, it might be well to negotiate with them and secure a relinquishment of all their claims, paying therefor an annual sum sufficient for their support and civilization during a term of, say, ten years. I think that the Indians would agree to give up their claim if the Government would agree to pay them what shall be found to be a fair and reasonable sum therefor. The claim is of such doubtful and uncertain nature that I do not look upon it as having any great value. I do not think that they should be offered any large sum for a full and final relinquishment of the claim they set up. Whether there be justice in the claim or no, the Indians have grown to believe that it is just, and I am inclined to believe that a reasonable consideration therefor, stipulated for expenditure in annual installments for their benefit, would be not only a good business solution of the question, inasmuch as the Government appropriates money annually for their support, but would satisfy what they have been led to believe is a just claim for the land.

I would consider \$150,000 to \$200,000, in addition to what has heretofore been expended for their benefit, a fair and reasonable basis of adjustment of this matter, the expenditure thereof to be made in annual installments for the benefit of the Indians belonging to the Turtle Mountain Reservation.

Of the appropriation made by act of August 19, 1889, providing for negotiations with these Indians, there remains on the books of this office a balance of \$800.

Mr. Bottineau's letter, together with a communication from Little Shell, and the newspaper referred to herein, are herewith inclosed, with request that they be returned to the files of this office when they are no longer needed by the Department.

Very respectfully, your obedient servant,

R. V. BELT, *Acting Commissioner.*

### EXHIBIT No. 5.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
*Washington, January 6, 1893.*

SIR: I have the honor to acknowledge the receipt, by your reference for consideration and report, of the report of the Turtle Mountain Indian Commission, dated December 3, 1892, submitting an agreement made by the commission with the Turtle Mountain Band of Chippewa Indians October 22, 1892.

The commission was appointed under the following provision of the Indian appropriation act approved July 13, 1892 (27 Stats., 139):

"That the President of the United States is hereby authorized to appoint a commission to consist of three persons familiar with Indian affairs, not more than two of whom shall be of the same political party, who shall negotiate with the Turtle Mountain Band of Chippewa Indians in North Dakota for the cession and relinquishment to the United States of whatever right or interest they may have in and to any and

all land in said State to which they claim title, and for their removal to and settlement upon lands to be hereafter selected and determined upon by the Secretary of the Interior upon the recommendation of the proposed commissioners, subject to the approval of Congress. Said commissioners shall also report to the Secretary of the Interior the number of the said Chippewa Indians and the number of mixed bloods, if any, who are entitled to consideration by the United States Government; and the sum of six thousand dollars, or so much thereof as may be necessary, is hereby appropriated for the purpose of defraying the expense of the proposed negotiations."

Article 1 of the agreement promises perpetuation of the friendly relations existing between the Indians and the United States.

By article 2 the Indians cede all claims, estate, right, title, and interest of the Turtle Mountain band of Chippewas, or any of them, as members of said band, in and to all lands in the State of North Dakota, excepting that tract of land particularly mentioned and set apart by Executive order dated June 3, 1884, the said reserve being 12 miles in length and 6 miles in width, and now occupied as a reservation by the said band of Indians. It is expressly stipulated by this article that the land now occupied and used for school, church, and Government purposes shall be so held at the pleasure of the United States, and may, with the approval of the Secretary of the Interior, be patented, when the interest of the United States, the Indians thereon, or the efficient school conduct requires; and further, that the Secretary may, as occasion requires, set apart other land in said reserve for school and other public uses.

By article 3 it is agreed that, subject to the stipulations contained in article 2, the reservation shall be held in common by the tribe; that the United States shall cause the reservation to be surveyed as public lands are surveyed, for the purpose of enabling such Indians as may desire to take homesteads; that the selections shall be so made as to include in each case, as far as possible, the residence and improvements of the Indians, giving to each an equitable proportion of natural advantages, and when it is not practicable to so apportion the entire homestead of land in one body it may be set apart in separate tracts, not less than 40 acres in one tract, unless the same shall abut upon a lake; but all assignments of land in severalty shall conform to the Government survey, which shall be made without expense to the Indians.

As a consideration for the foregoing cession, the United States agrees, by article 4, to pay the Indians \$1,000,000, of which sum there shall be paid annually the sum of \$50,000 for the period of twenty years, which sums shall be invested annually in food, clothing, bed clothing, houses, cattle, etc., and such things as may be approved by the Secretary of the Interior, who shall have authority to direct such expenditure, and at such time in the building, improving, and repairing of houses as the needs of the Indians on the above reserve may require, except as hereinafter agreed.

By article 5 it is stipulated that the schools now located upon the reserve are to be maintained in efficiency as at present, and increased as necessity may require.

Article 6 provides that all members of the bands who may be unable to secure land upon the reservation may take homesteads upon any vacant land belonging to the United States without charge, and continue to hold and be entitled to such share in all tribal funds, or other property, the same as if located on the reservation.

Article 7 provides that as long as the United States retains and holds the title to any land in the use or occupation of any members of the band or the title to other property in the possession of any Indian of said band, which it may do for twenty years, there shall be no tax or other duty levied or assessed upon the property, the title to which is held or maintained by the United States.

By article 8 it is agreed, as a further consideration, that the 640 acres of land heretofore reserved to "Red Bear" by the treaty with the Red Lake and Pembina bands of Chippewas, proclaimed May 5, 1864 (13 Stats., 667), be patented to Red Bear, a member of the Turtle Mountain Band of Chippewas, who is the only son and heir of the "Red Bear" named in the eighth article of the treaty referred to.

Article 9 provides that any member of the band who shall take up arms against or resist the established authorities of the United States shall, in the discretion of the United States, be forever barred from the benefits of this agreement, and right of such persons hereunder shall be forfeited to the United States.

Article 10 stipulates that this agreement shall be of no binding force or effect until ratified by Congress.

Article 11 provides that the sum of \$5,000 of the \$50,000 above stipulated for (article 4) be annually paid the Indians in cash per capita.

The agreement is signed by the commissioners and by 261 Indians, and is accompanied by the certificate of John Baptiste Ledeault and Joseph Rolette, interpreters, that they fully explained the agreement to the Indians whose names are signed thereto, and that they acknowledged the same to be well understood by them.

In their report transmitting the foregoing agreement, the commissioners comment upon the fact that the agreement secured does not exactly meet the object for which the commission was created.



The law contemplates the release of claim to all lands in North Dakota and the removal of the Indians to some other place; but they had to accept this or nothing.

In support of the agreement the commissioners state they deem it but just to say that after an examination of the whole matter and comparisons with other treaties, a less liberal agreement would be unjust to the Indians; that every effort in the power of the commissioners was exercised to secure the relinquishment of the two townships, upon which the Indians are now located, to the Government; that it was also urged upon the band to accept a provision that the lands in the two townships should be taken in severalty, but this was so objectionable to the Indians that to have inserted or retained it in the agreement would have defeated it; that they at last consented to the third article of the treaty, which, the commissioners believe, will, long before the expiration of the twenty years, result in the whole of the two townships being taken in severalty.

The commissioners further state that the question of consideration to be paid for the relinquishment of the Indian claim to all land in North Dakota is deserving of more extended consideration. The commissioners then proceed to review at length (pp. 16, 17) the validity of the claim as derived from the several treaties cited by them, and conclude that, as nearly as they can ascertain, the Indian title to a tract of land of between 8,000,000 and 10,000,000 acres lying north and west of Devils Lake has never been ceded to the Government, is claimed by the Chippewas, and their right to it is recognized by neighboring tribes. The commission is therefore forced to report that the Turtle Mountain Band of Chippewa Indians have as valid an original Indian title to the entire tract of land as any Indian tribe ever had to any tract.

In support of their claim that the amount agreed upon is but a meager sum as compared with what the Government has paid for the relinquishment of the Indian title to other tracts, the Indians argue that the Government is, in fact, paying but 10 cents an acre for land, a large portion of which is classed among the best agricultural land in the State, while the Government has recently contracted to pay other Indians for similar lands in Dakota the sum of \$2.50 per acre (instancing the Fort Totten (?) and Sisseton and Wahpeton bands of Sioux).

The Indians complained much of the treatment that they, a friendly band, had received from the hands of the Government as compared with the treatment received by tribes concerned in the Minnesota massacre of 1862; they challenged the commission to show that they had ever ceded the lands they claim, and asked the Government to deal rightly with them. They argue that the Government has not taken the land of other Indians, even its worst enemies, without securing the Indian title, and ask what right the Government has to reduce them to two townships?

They state that the Government, powerful as it is, should be ashamed to take the land from them, who are powerless to protect it, save as they appeal to the integrity of the Government; that every time the Sioux tribes have risen against the Government and killed white settlers the Government has gone down in its pockets, increased their provisions and paid them well for their lands, while it is sought to drive them (the Turtle Mountain band) from their homes.

After completing the census, the next step of the commission, in accordance with instructions, was to go to Fort Berthold and endeavor to locate the Turtle Mountain band on that reservation. The commission states that they found the soil and country about Fort Berthold far inferior to that of the Turtle Mountains; that the Indians at Fort Berthold claimed that they needed all their lands for their children; that having just ceded 1,600,000 acres, they were surprised that the Government should so soon ask for more; that when they made the contract with the last commission ceding this land that commission told them that they would need the balance of their lands and advised them to sell no more; that when they made this contract the three tribes entered into a mutual agreement to sell no more of their land for fifteen years; they therefore refused to sell any more of their lands or to receive their neighbors, the Turtle Mountain band.

In this matter of removing the Indians to some other place they reiterated their claim for a reservation, where they are now located, 30 miles square, plead their love for their ancestral home, some declaring that they would never leave it, and if it was God's will that they and their children should perish by hunger, they would die in the country the Great Spirit had given them. They would rather accept a very small farm for the head of the family and remain where they are than take liberal allotments for themselves and their children elsewhere.

The commissioners recommend that a committee be provided for on the part of the Government, to act with one on the part of the Indians, for the purpose of selecting a proper place for such members of the band as may desire allotments; also, that the aged and feeble, in lieu of their allotments may receive in money the value thereof, at Government prices for land, to be used for their support, under the direction of the Indian Department.

Referring to article 5 of the agreement, the commissioners suggest that after the word "present," in line 3 of said agreement, the words "not exceeding twenty years" be inserted, as it was the intention, and so understood by both parties to the agreement, to maintain the schools only during that period of time.

The total area of the reservation is 46,080 acres, of which the commissioners state about 13,000 acres are fitted for agricultural purposes, the balance being woodland interspersed with small lakes. The number of Indians entitled to the benefits of the agreement, as found by the commissioners, is 1,759.

Upon a review of the work of this commission, it will be observed that it has failed to accomplish one of the principal objects of its mission, viz, the removal of the Indians from their present reservation of two townships in North Dakota. This is the second failure of the Government to secure the consent of the Indians to such removal, and the spirit and determination manifested by them to remain where they are makes it evident that further negotiation with them for this purpose would be entirely useless, at least for the present. And the reasons advanced by them for wishing to stay where they are and the appeals made by them in support of their reasons disincline me to recommend their removal without their consent, even if it could be effectually done without trouble.

It is stipulated by the agreement that the Government is to pay the Indians \$1,000,000 for the relinquishment of their long-pending and persistent claim to about 9,000,000 acres of land in North Dakota. Whether the said sum is considered reasonable or excessive depends to a great extent upon the view taken of the validity of the Indian claim. The history and validity of this claim is so fully set forth and discussed in House Report No. 1144, Forty-seventh Congress, first session, and in a letter from this office to the Department, dated June 7, 1882 (copy herewith), that I deem it unnecessary to discuss it here, further than to state that its validity has been generally recognized by this office.

Referring to the suggestion of the commissioners on page 23 of their report, that, after the word "present," in line 3 of article 5, the words "not exceeding twenty years" be inserted, as such was the intention and so understood by both parties to the agreement, I have to state that such amendment is a very proper one, as promises of benefits to be bestowed for an indefinite period occasion trouble when such benefits come to be discontinued. I have accordingly made provision for the amendment of said article in the draft of the bill ratifying the agreement.

About the only provision of the agreement to which I feel obliged to offer objection is that the 640 acres of land heretofore reserved to "Red Bear" by the treaty between the United States and the Red Lake and Pembina bands of Chippewa Indians, concluded October 2, 1863 (13 Stats., 667), be patented to "Red Bear," a member of the Turtle Mountain Band of Chippewas, who is represented to be the only son and heir of the "Red Bear" named in the eighth article of the treaty referred to. In this connection I have to state that Senate bill No. 2894, Fifty-second Congress, first session, entitled "A bill to quiet title to certain lands in the State of North Dakota," had in view the patenting of certain land to "Red Bear."

In the office report on said bill, dated May 9, 1892, it was recommended that the bill be so amended as to cause the land to be patented to the heirs of said Red Bear, without naming them. This was for the reason that this office was not satisfied that the Red Bear mentioned in the agreement is the only heir of the Red Bear referred to in the said treaty of 1863.

I am not advised as to what the action of Congress has been on said bill, and I have, therefore, in preparing the accompanying draft of bill to ratify the agreement under consideration, incorporated a modification of the article (eighth) so as to provide for the issue of a patent to the heirs of the Red Bear named in the treaty of 1863 aforesaid.

It will be observed that I make no provision in said draft of bill for having the agreement sent back to the Indians for their acceptance of this modification. Such action would cause considerable trouble and delay, and I do not consider it necessary, because of the following reasons, viz: That the modification is immaterial; that the land in question is within the tract ceded by the treaty of 1863 with the Red Lake and Pembina bands of Chippewas, and not within the tract to which the Turtle Mountain band now relinquishes claim; that the matter can therefore be of little, if any, consequence to the Turtle Mountain Indians as a band, and that if the "Red Bear" intended to be benefited by the agreement is the only heir, as alleged, he will receive the full benefit intended to be conferred; if not, he will be justly required to share it with whomsoever may be entitled.

Copies of the several papers for transmission to Congress are herewith inclosed.

Very respectfully, your obedient servant,

T. J. MORGAN, *Commissioner*.

The SECRETARY OF THE INTERIOR.

## EXHIBIT No. 6.

BELCOURT, N. DAK., January 26, 1898.

*From the chief and all the councilmen to John Bte. Bottineau, at Washington, D. C.:*

The Chief, Little Shell, here speaks: We are tired, fatigue, since so long waiting for the settlement of our claim. Even though we are so fatigue we keep strong—firm—to stay by you and your efforts in our cause. We are always ready to go or do as you say, to help pushing our case.

In regard to the affairs and doings of the three commissioners—the ten-cent treaty commissioners—we are very much troubled in here about it; but I repeat to you here again, as I did say while in Washington—to the House Committee on Indian Affairs—that I would never sign their affairs, the ten-cent treaty; I am all the same yet and now.

My greatest fatigue is to see my people so poor and going so hungry. In regard to your proposed amendment, to secure fifteen thousand dollars for relief pending the settlement of our claim, I would like to see all the members of our tribe, the Turtle Mountain, get some of it equally, and not like they have done with the appropriation of 1895, and give it only to those favored ones which were put on the list (rolls) by the commissioners. Have this appropriation so arranged to protect us all equally.

In regard to the conditions of our affairs, we have asked your uncle Charles for your attention to get some means from the Government which will help us to go to Washington. It will give you more force to push our case through, even if you have to do so yourself, as you have done, to bring our delegation to Washington, the last time we were there, in May and June, 1896. It is the greatest hope and desire of the chief and all the councilmen of the tribe, because we know we could help you and help our cause greatly, and we would accomplish something, and it is important we should go now, because our pecuniary condition and the necessity demands it, and we know we could accomplish something for the benefit of the tribe through our friends in Congress, with the help of our present Commissioner of Indian Affairs, who you say is the true friend of the Indians. We wish to see him and talk to him ourselves now; and we ask you to help us in some way which will give us means to bring us to Washington as soon as possible.

The chief, Little Shell, and all the councilmen send you their best respects.

LITTLE SHELL, *Chief* (his x mark).

SASSWAIN, HENRI POITRAT (his x mark).

GOURIN, BAPTISTE CHAMPAGNE (his x mark).

BAY-RISS, CUTHBERT GRANT (his x mark).

JOHN B. RENO,

*Secretary of the Council and of the Turtle Mountain Indians.*

NOTE.—If you can not succeed to secure some means to help us to go to Washington, as the chief and council ask you, I will try to go myself.

JOHN B. RENO, *Secretary.*